



May 22, 2020

Via Electronic Submission

Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

**RE: Swap Data Recordkeeping and Reporting Requirements
RIN 3038-AE31**

Dear Mr. Kirkpatrick:

The Edison Electric Institute (“EEI”) and the Electric Power Supply Association (“EPSA”) (hereafter “Joint Associations”) support the Commodity Futures Trading Commission’s (“CFTC” or “Commission”) goal of improving the accuracy of data reported to and maintained by the swap data repositories (“SDRs”) and appreciate the opportunity to comment on the notice of proposed rulemaking proposing amendments to parts 45, 46 and 49 of the Commission’s regulations.¹

EEI is the association that represents all U.S. investor-owned electric companies. Our members provide electricity for about 220 million Americans and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than 7 million jobs in communities across the United States. EEI members are regulated at both the state and federal level and have an obligation to serve customers at just and reasonable rates.

EPSA is the national trade association representing competitive power suppliers in the US, including generators and marketers. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. EPSA seeks to bring the benefits of competition to all power customers.²

Joint Associations have been active participants in the Commission’s numerous rulemakings implementing the provisions of the Dodd-Frank Wall Street Reform and Consumer

¹ *Swap Data Recordkeeping and Reporting Requirements*, Notice of Proposed Rulemaking, 85 Fed. Reg. 21578 (April 17, 2020) (“Proposed Rule”).

² This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

Protection Act (“Dodd-Frank Act”),³ including the rulemakings on swap data reporting, and have supported the goal of affording the regulators and market participants greater transparency into the swap markets. Joint Associations members are non-financial entities, or “commercial end-users” – referred to in the NOPR as “non-SD/MSP/DCO counterparties.” Joint Associations’ members are electric utility and competitive power supply companies whose principal business is to generate and deliver reliable, safe, and affordable energy to American homes and businesses. Joint Associations’ members typically enter into swaps to hedge or mitigate commercial risks arising from ongoing electric business operations, and as such are subject to certain swap data reporting obligations under the Commission’s rules and regulations.

Part 45 of the Commission’s swap data reporting rules identifies five “asset classes” of swaps and specifies the data elements necessary to report a swap for each of those asset classes in the Appendices to Part 45. Four of the five swap asset classes are derived by reference to underlying financial commodities – rates, currencies, credit and equities. The fifth asset class of swaps, deemed “Other” in the Commission’s rules, is derived by reference to categories of nonfinancial commodities, sometimes referred to as “physical” commodities, including agricultural commodities, metals and energy commodities (“NFC Swaps”).

Joint Associations’ members have spent significant time and money understanding the Commission’s rules and regulations regarding swap data reporting as applicable to NFC Swaps, as well as installing financial markets reporting systems and hiring and training personnel necessary to report dozens of data elements per NFC Swap to the SDRs. Joint Associations agree that the swap transaction data reporting rules should be amended, encourage the Commission to conduct a robust analysis of the benefits and costs of any amendments, and appreciate the Commission’s willingness to continue to solicit comments in an open and transparent regulatory process.

In November 2019, EEI filed comments in response to the rulemaking proposing amendments to parts 23, 43, 45 and 49 of the Commission’s regulations.⁴ In those comments, EEI urged the Commission to streamline and harmonize data elements before imposing additional reporting requirements on commercial end users; to not impose on-going verification requirements on non-SD/MSP/DCO reporting counterparties; and not impose any new requirement on non-reporting counterparties. Accordingly, Joint Associations appreciate that the Proposed Rule removes many data fields as well as the quarterly reporting requirement for commercial end users.⁵

Joint Associations would note many of these changes will require system modifications to the extent that the data is no longer required or new data fields are added. As such, once finalized the final rule should reflect all of the reporting and recordkeeping changes to be made and not be a starting point for SDRs to add on additional requirements. Currently, SDRs that

³ Pub. L. No. 111203, 124 Stat. 1376 (2010).

⁴ *Certain Swap Data Repository and Data Reporting Requirements*, 84 Fed. Reg. 21044, RIN 3038-AE32 (May 13, 2019) (“NOPR”); Letter from APPA, EEI and NRECA to Christopher Kirkpatrick, Sec’y, CFTC (Nov 1, 2019) (on file with the CFTC). EPSA notes its support for the previously filed comments of APPA, EEI and NRECA in response to the NOPR in RIN 3038-AE32.

⁵ *See e.g.* Proposed Rule at 21582.

accept swap data for NFC Swaps do not have equivalent standards, taxonomy or technical specifications for data fields for reporting counterparties to populate for NFC Swaps. Joint Associations urge the Commission and the SDRs to work together on this harmonization effort. This will help ensure that the SDRs do not amend their policies and procedures in different ways. Harmonization on the front end will help ensure that the Commission will receive uniform data and that commercial end users will not have to change their systems to meet additional SDR requirements.

Joint Associations would also note that many of the contracts that are executed between commercial end users are exotic swaps that do not fit into the standard products generally reported to the SDRs. For these transactions, the contract is provided to the SDR. Given that the SDR and the Commission are provided the contract and have all of the commercial terms available to them, the reporting fields for these contracts should be limited to the party name and execution date. This will provide uniform data to the Commission while reducing the regulatory burden for end users.

Finally, Joint Associations seek clarification that the Commission is not imposing an additional recordkeeping on commercial end users beyond the records that are kept in the normal course of business and are typical for the relevant industry. Joint Associations understand this to be consistent with the current recordkeeping requirement for Trade Options. Imposing a new specific set of records for entities that are not registered with the Commission will inject regulatory uncertainty into what is required to be kept and necessitate the creation of new processes and systems which will increase the regulatory burden and expense.

Joint Associations appreciate the Commission undertaking this effort, and requests that the Commission consider the input and provide the relief described herein.

Respectfully Submitted,

/s/ Lopa Parikh

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